IN THE HIGH COURT OF DELHI AT NEW DELHI

CR.P. No.286/2006

Seasons Catering Services Pvt.Ltd. ..... Petitioner
! through: Mr.V.P.Singh, Senior Advocate with Mr.M.I.Chaudhary, Advocate.

VERSUS

$ Delhi Development Authority & Ors. ..... Respondents
^ through: Mr.Rajiv Bansal, Adv. for R-1 & 2.

RESERVED ON : 07-05-2007

% **D**ATE OF DECISION: 31-05-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. Vide order dated 7.5.2007, with consent of parties, it was directed that the civil revision petition would be treated as a petition under Article 227 of the Constitution of India. Accordingly, arguments were heard. Matter was reserved for judgment.

2. Relevant facts necessary to be noted for an adjudication are that on 29.5.1998 a licence deed was executed by DDA in favour of the petitioner granting a licence to the petitioner to enter upon and use the premises described in the licence deed for running a restaurant and picnic hut at Mehrauli.

3. The important terms of the licence deed are :-

a) Clause 1. It states that the initial period for which the licence would be operative is 11 months, renewable for further period of 11 months, but upto a maximum of 5 years with increase of licence fee by 10% on each renewal.

b) Clause 3. It states that no right, title or interest in the land/structure shall accrue in favour of the petitioner on account of grant of licence.

c) Clause 9. It states that on expiry of the period of the licence or earlier determination thereof, petitioner would peacefully handover possession of the site to DDA and remove its material brought at the site.

d) Clause 15. It states that the petitioner would not be permitted to make any additions/alterations within the licenced site/premises except to make suitable wooden compartment/ partition inside the restaurant.

4. Petitioner continued to exercise right under the licence deed till a notice dated 28.5.2003 was issued by DDA informing that the maximum extendable period of 5 years being over, DDA would be resuming possession on 5.6.2003. The petitioner was advised to vacate the licensed site.

5. Neither was there compliance to the notice dated 28.5.2003 nor was there any indication from the petitioner that he would comply with the said notice. On the contrary, the petitioner filed a suit for injunction to restrain DDA from resuming possession. The fate of the suit is unknown but admittedly, no orders were passed in favour of the petitioner in the said suit.

6. Since DDA had to regain possession by procedure established by law and the premises were a public premises as defined under the Public Premises (Eviction of Unauthorized Occupants) Act,1971 (hereinafter referred to as P.P.Act,1971), the Estate Officer, DDA issued a notice dated 5.12.2003 and served the same upon the petitioner calling upon the petitioner to show cause as to why an order of eviction be not passed.

7. The notice in question was issued under sub-section (i) and clause (b)(ii) of sub-section (2) of Section 4 of the P.P.Act,1971.

8. Since much controversy was raised on the language of the notice aforesaid, it would be useful to reproduce the same in verbatim. The notice reads as under :-

"IN THE COURT OF ESTATE OFFICER
SOUTH WEST ZONE:ROOM NO.C-1/5, VIKAS SADAN,
NEW DELHI - 110023

Notice under sub-section (i) and clause (b)(ii) of Sub-section (2) of Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act,1971

M/s Seasons Catering Service Pvt.Ltd.
B-6, Anupam Plaza, Hauz Khas,
New Delhi.

File No.EO/SWZ/Restaurant/Picnic Hut/Mehrauli

dt. 5.12.03

WHEREAS I, the undersigned of the opinion on the ground specified below that you are in unauthorized occupation of the public premises mentioned in the schedule below and that you should be evicted from the said premises.

'GROUNDS'

The land mentioned in the schedule below belong to Union of India and is under the Management and Control of DDA.

Now, therefore, in pursuance of sub-section (1) of section of the P.P.Act, I hereby call upon you to show cause on or before 19.12.2003 at 12.00 noon why such an order of eviction should not be made.

And in pursuance of clause (b)(i) of sub-section (2) of Section 4, I also call upon you all persons who are, or may be in occupation of or claim interest in the public premises described below to appear before me in person or through a duly authorised representative capable to answer all material question in connection with the matter along with evidence which you intend to produce in support of the show cause on 19.12.2003 at 12 noon for personal hearing. In case, you fail to appear on the said date and time, the case will be decided ex-parte.

SCHEDULE

Land measuring 12,654.75 sq.mtrs., for restaurant/ picnic hut at Mehrauli Green Area, New Delhi.

sd/-
ESTATE OFFICER
South West Zone/Room No.C-1/6,
Vikas Sadan, New Delhi-110023"

9. To the naked eye, without much efforts, it would be evident that the Estate Officer has acted more like a machine and less like a human being. The proforma specified under the P.P.Act, 1971 pertaining to a notice under Section 4 has been utilized and under the caption "GROUNDS" the same word has been typed without specifying the grounds on which the notice was issued and on which an order of eviction was proposed to be passed.

10. Notice dated 5.12.2003 being served upon the petitioner, a detailed reply was filed. I may note that the reply runs into 21 pages.

11. Inter alia, it was stated that DDA was unable to utilize the land for a picnic complex and therefore in October 1997 DDA invited offers from third parties to operate a picnic complex from the site. That officers of DDA informed the petitioner that period of

11 months as the maximum period for the licence extendable upto a maximum of 5 years was a formality and that the allotment would be extended commensurate with the investments made by the successful tenderer. That based on the aforesaid oral assurances the petitioner submitted a bid. Being the highest bidder the bid of the petitioner was accepted. That licence deed dated 29.5.1998 was thus a mere formality. That the petitioner spent about Rs.85 lacs on the land and refurbishing the site. That letter dated 28.5.2003 issued by DDA was illegal. That the letter was challenged by way of a suit and that the suit was pending. That the land was an agricultural land and was governed by the provisions of Delhi Land Reforms Act,1954 and only authorities constituted under the said Act were competent to take a decision on the issue of possession. That the land was vested with DDA for the purpose of management and control and, therefore, Estate Officer of DDA had no jurisdiction to initiate proceedings under the P.P.Act,1971. That the notice did not specify the grounds on which it was alleged that the petitioner was in unauthorized occupation of land. It was specifically pointed out that except for recording “GROUNDS”, the notice failed to notify any ground. That the Central Government had resolved, which resolution was notified as a guideline on 30.5.2003 that public sector undertakings would not evict tenants on commercial considerations.

12. One would have expected the Estate Officer, DDA to have cured the defect in the show cause notice by issuing a supplementary notice specifying the grounds on which it was

alleged that the petitioner was an unauthorized occupant from the premises in question and had to be evicted.

13. But the Estate Officer continued with the proceedings and recorded evidence. In brief, the evidence led by DDA was that the licence was not renewed beyond a period of 5 years and on the terms of the licence deed, continued retention of the licensed premises beyond 5 years was an unauthorized retention.

14. Vide order dated 16.8.2004, the Estate Officer returned a finding against the petitioner holding that as the land was an acquired land and belonged to the Central Government and placed at the disposal of DDA under Delhi Development Authority Disposal of Developed Nazul Land Rules 1981 and Section 22 of Delhi Development Act, Delhi Land Reforms Act 1954 was not applicable thereto. It was held that the grant did not permit the petitioner to effect any structural additions over the land except to make wooden partitions in the restaurant. He opined that no right, title or interest was created in favour of the petitioner qua the licensed site. He held that since the licence deed specifically noted that it could be renewed upto only 5 years and that there was no renewal beyond 5 years, petitioner had no right to continue to occupy the site. Accordingly, ejectment order was passed.

15. Ejectment order dated 16.8.2004 was challenged by the petitioner by way of an appeal under Section 9 of the P.P.Act 1971. Notwithstanding various grounds urged in the appeal, only 5 grounds were addressed at the hearing as noted by the learned Judge in para 2.2 of the order. The 5 grounds on which eviction order was challenged and as noted in para 2.2 of the order of the

learned Appellate Judge are as under :-

> "i) That the Estate Officer has not been duly appointed in terms of Section 3 of the Act. Despite this objection being raised before the Estate Officer, he proceeded to take up the matter without considering the appellant's plea. Therefore, the impugned order is without jurisdiction and is liable to be set aside.
>
> ii) That notice u/s 4 of the Act lacks material particulars and was vague;
>
> iii) That the impugned order suffers from non-application of mind and has been passed by the Estate Officer simply on the basis of the advice received from the DDA's Law Officer;
>
> iv) That notice u/s 4 as well as the impugned order u/s 5 of the Act was illegal as they have not been issued in the particular form prescribed under the rules; and
>
> v) That cancellation of lease in favour of the appellant and its non-extension is arbitrary and discriminatory and is violative of Article 14 of the Constitution of India and is even in violation of Clause 7 of the lease, therefore, proceedings arising therefrom are illegal. "

16. Vide order dated 15.9.2006, the appeal has been dismissed. Each and every contention urged has been repelled.

17. I need not note the reasons in the order passed by the learned Appellate Judge for the reason I intend to note grounds urged in support of the petition and reasons advanced by the learned counsel for the petitioner and thereafter deal with the same. Duplication would serve no useful purpose.

18. I may note the grounds which were advanced at the hearing held on 7.5.2007. Eschewing a challenge to the competence of the Estate Officer to act as the Estate Office of DDA, a ground which was urged before the learned Appellate Judge as also the ground urged before the Estate Officer that the

land was covered by the provisions of Delhi Land Reforms Act 1954 and hence authorities constituted thereunder could alone decide the issue of possessory rights were not urged before me.

19. Four contentions were urged. It was firstly urged that the show cause notice dated 5.12.2003 indicated no grounds on which it was asserted that the petitioner was an unauthorized occupant. Shri V.P.Singh, learned senior counsel for the petitioner urged that the notice was issued mechanically recording the captioned 'GROUNDS" without disclosing what the grounds were. Thus, counsel urged that the notice was non-est and could not form the basis of a valid eviction order. Counsel cited AIR 1980 J&K 16, *Dr.Yash Paul Gupta Vs. Dr.S.S.Anand*, a Division Bench decision of the High Court of Jammu & Kashmir; AIR 1988 Delhi 174 *Shri Bhagat Singh Vs. DDA* and 2003 (VI) AD(Delhi) 357; *Kailash Singh Vs. Union of India* to buttress his submissions.

20. On merits, counsel urged that there was a total non-application of mind by the Estate Officer who has returned a finding that the licence was for a period of 11 months only. Counsel urged that the Estate Officer ignored that the licence deed clearly recorded that it was renewable for successive period of 11 months. The third contention urged by the learned counsel was predicated on the policy decision formulated as guidelines and circulated on 30.5.2003 to the effect that for the premises under the control of public sector undertakings/ financial institutions, P.P.Act 1971 would not be resorted to for evicting tenants merely on commercial considerations. Lastly, counsel urged that the tenure of licence deed revealed that it was actually a lease and,

therefore, petitioner could not be evicted from the site under the P.P.Act 1971 without serving a notice under Section 106 of the Transfer of Property Act 1882 and validly determining the lease thereunder.

21. Since main thrust of the submissions made by the learned counsel for the petitioner was on the first count urged i.e. deficiency in the notice, I propose to deal with the same at the end.

22. Pertaining to the other three grounds urged, suffice would it be to note that a trivial incorrect recording of a fact which otherwise has no material bearing on the substance of the issue cannot ever vitiate an order.

23. No doubt, the Estate Officer has recorded that the licence granted was for a period of only 11 months, but since possession was asked to be restored on expiry of 5 years and eviction proceedings were initiated after 5 years, said incorrect recording of fact is immaterial.

24. As noted here-in-above, vide clause 1 of the licence deed, it was specifically noted that the initial period of the licence was 11 months. That the licence was renewable for successive period of 11 months with increase in licence fee by 10% but upto only 5 years.

25. Thus, the second count on which a challenge has been urged against the eviction order and the order passed by the learned Appellate Judge fails.

26. The third challenge predicated on the policy decision dated 30.5.2003 raised an issue which is no longer res-integra. A

Division Bench of this Court in the decision reported as 100 (2002) DLT 497, *Uttam Parkash Bansal & Orts. Vs. LIC* had an occasion to deal with the issue as to when executive instructions can operate in the field occupied by a statute or a statutory rule. The Division Bench categorically held that executive instructions cannot operate in the field occupied by a legislation, be it a statute or a statutory rule.

27. That apart, the policy guideline has to be understood in the historical background which necessitated the formulation of the policy.

28. Life Insurance Corporation and other financial institutions, to whom properties were mortgaged for loans obtained by third parties, managed to acquire ownership rights in the properties which had to be sold due to the mortgagee defaulting in repayment of the loan. More often than not, these properties had tenants who were protected by Rent Control Legislations. On ownership being acquired by the statutory corporations, the premises/properties went outside the protective umbrella of the Rent Control Legislations. It was in this context that the Central Government issued guidelines that the statutory corporations should not initiate eviction proceedings against the old tenants purely on commercial considerations.

29. Inherently, the policy guidelines would not apply to a case of a licence under a commercial venture of a statutory corporation; in the instant case DDA. Sine qua non for application of the policy guideline is a tenancy right in favour of the tenant prior to acquisition of ownership by the statutory corporation.

30. In modern times, statutory authorities are augmenting their resources by entering into purely commercial ventures. A land owning agency can utilize its land by letting it out or granting a licence in respect thereof. The revenue generated is used for cross subsidizing low cost housing etc.

31. The second contention urged is accordingly found without any merits.

32. On the last issue urged i.e. that the indenture is a lease and not a licence, the same has to be rejected for two reasons. Firstly, it was never urged before the Estate Officer nor before the Appellate Judge that the indenture created is a lease. On the contrary I note that the contention urged by the petitioner was that since the licence contained a grant which permitted the petitioner to effect constructions on the site and since the petitioner effected construction of a permanent character, the licence was an irrevocable licence. Though not specifically stated, defence predicated was under Section 60 of the Easement Act 1882.

33. Thus, petitioner cannot be permitted to urge a plea not taken at the earlier stage either before the Estate Office or the Appellate Judge.

34. Secondly, assuming that the grant is a lease, case projected that there is no determination of the lease inasmuch as no notice under Section 106 of Transfer of Property Act 1882 was issued to determine the lease is a submission without any foundation for the reason, where a lease expires by efflux of time, no notice of determination of the lease has to be issued. Indeed, as noted above maximum period during which petitioner could

occupy the site was 5 years. Admittedly prior to the completion of 5 years period, on 28.5.2003, DDA notified to the petitioner that period of grant being over, DDA would assume possession on 5.6.2003.

35. The first contention urged by Shri V.P.Singh, learned senior counsel for the petitioner merits a deeper consideration.

36. The conventional view is that where a statute vests a power and specifies the manner in which the power has to be exercised, the power must be exercised in the manner specified and in no other manner. Further, where the statute expressly provides for issuance of a notice and granting a hearing, the statutory requirements would be read as mandatory, for the reason they are a statutory incorporation of the principles of natural justice. This was the rationale of the decision of the Division Bench of the Jammu & Kashmir High Court in *Dr.Yash Paul Gupta's* case (supra). The Division Bench repelled the argument that notwithstanding deficiency in the ground specified in the notice issued under Section 4 of the P.P.Act 1971, since the noticee was aware of the ground for eviction and had given a reply on merits which was considered by the Estate Officer, it made no difference. The Division Bench held that requirement of Section 4 of the P.P.Act 1971 was mandatory and not merely directory for the reason failure to make an effective reply to the notice for eviction visits the noticee with the consequences of eviction.

37. In *Bhagat Singh's* case (supra) a learned Single Judge of this Court also took the view that a notice under Section 4 of the P.P.Act 1971 was a mandatory requirement and unlike a notice

under Section 106 of the Transfer of Property Act 1882 could not be waived. On facts, a notice which misdescribed the subject property was held to be an invalid notice. Eviction order passed pursuant thereto was quashed.

38. In *Kailash Singh's* case (supra) importance of the notice under Section 4 of the P.P.Act 1971 was highlighted with reference to an order of eviction being passed on grounds other than the ones which were notified to the noticee. It was held that requirement of a notice being mandatory, an order which travelled beyond the terms of the notice would amount to an order being passed without a prior notice.

39. However, judicial trend reveals that there has been a shift in the strict view of strict compliance with the letter of the law pertaining to issuing a notice and contents thereof.

40. In the decision reported as 1980 (4) SCC 379 *S.L.Kapoor vs. Jagmohan* (p 395 para 24) it was observed:-

> "As we said earlier where on the *admitted* or *indisputable* facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs." (emphasis supplied)

41. It is, therefore, clear that if on the *admitted* or *indisputable* factual position only one conclusion is possible and permissible the Court need not issue a writ merely because there is violation of the principles of natural justice.

42. With periodic frequency Courts are faced with a dilemma between breach of the rules of natural justice and the Court's discretion to refuse relief even though the rules of natural justice have been breached, on the ground that no real prejudice is

caused to the affected party. In the decision reported as AIR 1966 SC 828 *Gadde Venkateswara Rao vs. Government of A.P.* and in the decision reported as (1988) 1 SCC 40 *Mohd. Swalleh vs. IIIrd ADJ* the Supreme Court refused to issue a writ of certiorari notwithstanding that the impugned order was passed without issuing the mandatory notice.

43. In the decision reported as 1993 (4) SCC 727 *Managing Director ECIL, Hyderabad vs. B.Karunakar & Ors.* the theory of prejudice caused to be shown was highlighted by the Supreme Court. It was held that mere breach of a principle of natural justice was no ground to quash a decision unless the party affected established that it was prejudiced by the said deficiency.

44. In the decision reported as (1996) 6 SCC 237, *M.C.Mehta vs. UOI & Ors.* the Supreme Court noted that cases relating to breach of natural justice can be segregated in 2 groups. Group 1 where facts are not admitted. Group 2 where the facts are admitted. In the context of the latter category it was noted that there was considerable case law and literature as to when relief can be refused on the ground that there was no possibility of success or that the result would not have been different even if natural justice was followed. The useless formality theory was discussed. It would be interesting to note that in para 22 of the report the Supreme Court noted that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the Courts can, in exercise of their discretion refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed.

45. There is yet another line of cases for example (1996) (3) SCC 364 *State Bank of Patiala vs. S.K.Sharma* and (1996) (5) SCC 460 *Rajender Singh vs. State of M.P.* that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived, while in the latter it cannot be waived.

46. Reason of the law pertaining to a notice is that the noticee must be fully informed of the reasons on which an action is proposed to be taken against him. Reason thereof is that only then can the noticee, effectively and meaningfully, put forward his case and deal with the contents of the notice. Indeed, reasons are the lifeline of a decision and lack of reasons render lifeless a decision. Where the noticee, notwithstanding deficiency in a notice, comprehends what is intended to be conveyed and effectively and fully responds to the notice I see no reason not to uphold a consequential order passed thereto, if otherwise the order is in compliance with the law, for the reason no prejudice whatsoever has been caused to the noticee. Further, where the noticee has given an effective and full reply to the notice and the authority issuing the notice has dealt with the reply on merits, and the decision on merits is legal and valid, it would be an empty formality to call upon the authority to issue a proper notice and deal with the same set of objections and re-decide the matter. I have used the expression 'same set of objections' for the reason the noticee would obviously re-state his case and do no more.

47. In the instant case, reply sent by the petitioner to the show cause notice dated 5.12.2003 shows that the petitioner was fully aware that its status as an unauthorized occupant was stated on the basis that the licence granted was extendable up to a maximum of 5 years, which period had lapsed without any further extension; licence having lapsed by efflux of time, the petitioner had to vacate the premises. So understanding the notice, a full and complete reply thereto was furnished. It was duly considered and a reasoned order was passed.

48. The first submission urged by learned senior counsel for the petitioner is accordingly found without any merits.

49. The petition is dismissed.

50. No costs.

May 31, 2007 PRADEEP NANDRAJOG, J.
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